

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE

Plaintiff,

v.

THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA

Defendant.

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO. 16- cv-5088

MOTION FOR ENTRY OF CONFIDENTIALITY AND SEAL ORDER

Certain student records relevant to this civil action are subject to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99 *et seq.*, and moreover involve matters of a sensitive and nonpublic nature, as reflected in part in plaintiff John Doe’s request to proceed anonymously in this civil action.

In view of these facts, defendant Trustees of the University of Pennsylvania (the “University”) respectfully requests that the Court enter the Proposed Order attached hereto as Exhibit A providing for student records in this action to be redacted to protect personally-identifiable information and filed under seal. In support thereof, the University avers as follows:

1. Plaintiff John Doe filed this action under a pseudonym on September 23, 2016. *See* Doc. Nos. 1 & 12.
2. Plaintiff filed an Amended Complaint on January 9, 2017. *See* Doc. No. 17.
3. By joint stipulation approved by this Court, the parties agreed that the University would respond to Plaintiff’s Amended Complaint on or before January 23, 2017. *See* Doc. Nos. 15 & 16.

4. The University has filed, concurrently with this motion, a motion to dismiss Plaintiff's Amended Complaint. *See* Doc. No. 19. Omitted from the publicly-filed version of the Declaration of James A. Keller filed in support of the University's motion to dismiss are Exhibits 3 and 4, which contain information of a sensitive and nonpublic nature. The University believes it would be in the best interest of all parties, as well as third-party students, if those documents were filed in redacted form and under seal. A courtesy copy of the exhibits the University seeks to file under seal will be provided to the Court via hand delivery with a copy to Plaintiff's counsel.

5. The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99 *et seq.* ("FERPA") provides certain confidentiality protections for student records. In light of those protections, and the sensitive nature of the subject matter of this civil action, the University moreover seeks an Order stating that the University and Plaintiff shall file all documents subject to FERPA in redacted form and under seal to protect the privacy of the parties and affected third-party students.

6. FERPA, among other obligations, requires colleges and universities to provide notice to students before disclosing personally-identifiable student information, even in the instance of a court order. *See* 34 C.F.R. 99.31(a)(9)(i)-(ii). As a result, the University seeks further prophylactic relief to permit it generally to engage in information-sharing with Doe in this lawsuit without the need to address FERPA concerns in each instance they arise. *See* Proposed Order at ¶ 3.

7. While FERPA does not provide privacy protections for a student who brings legal action against his/her college or university, *see id.* 99.31(a)(9)(iii)(B), the University nevertheless seeks an order requiring redaction and sealing of records pertaining to all students

whose personally-identifiable information may be at issue in this lawsuit, including Plaintiff, Jane Roe, and any third parties.

8. By email on Thursday, January 19, 2017, the University sought agreement from Plaintiff to pursue this relief on a joint basis. Counsel for the parties spoke by phone on January 20, 2017, at which time counsel for Plaintiff provided comments to a draft proposed order. The undersigned counsel recirculated the revised draft incorporating Plaintiff counsel's comments and requested authority to seek the revised relief on a joint basis. Late in the evening of Sunday, January 22, 2017 counsel for the Plaintiff informed the undersigned that Plaintiff could still not agree to the Proposed Order as drafted. As a result, this motion has been filed on a contested basis.

WHEREFORE, the University respectfully requests the Court enter the Proposed Order attached hereto as Exhibit A.

Respectfully Submitted,

/s/ Joshua W. B. Richards

James A. Keller

Joshua W. B. Richards

Amy L. Piccola

SAUL EWING LLP

1500 Market Street, 38th Floor

Philadelphia, PA 19102

Wendy S. White

Office of General Counsel

University of Pennsylvania

Attorneys for Defendant

Dated: January 23, 2017

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE

Plaintiff,

v.

THE TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA

Defendant.

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO. 16- cv-5088

PROPOSED CONFIDENTIALY AND SEAL ORDER

AND NOW, this _____ day of _____, 2017, it appearing that:

1. Certain information and documents relevant to this civil action may be of a confidential and/or legally protected nature, including but not limited to education records protected from disclosure by the Family and Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99 *et seq.* (“FERPA”); and

2. Good cause exists to order that such information, when filed with the Court, be filed in a nonpublic manner;

It is **ORDERED** that:

1. Documents filed with the Court by any party to this action shall be **REDACTED** to remove all personally identifiable information pertaining to any student.

2. Documents subject to FERPA filed with the Court in this litigation shall be filed **UNDER SEAL**, with a courtesy copy of any documents filed under seal provided to all other counsel and to the Court, with a clear header or footer on each page labeling the document as **CONFIDENTIAL**.

3. Consistent with 20 U.S.C. 1232g and 34 C.F.R. 99.31(a)(9)(i), insofar as: (a) any information or document in the possession or control of defendant is relevant to the claims and defenses asserted in this civil action, and (b) no basis exists for defendant to object to the disclosure of such information apart from its FERPA obligations, then (c) defendant shall disclose such documents notwithstanding the terms of the privacy protections set forth in 20 U.S.C. 1232g and 34 C.F.R. Part 99. Nothing in this Order shall be interpreted to waive, or impede defendant from asserting, non-FERPA-related objections to requests for documents or information in this civil action.

4. Notwithstanding item (3), above, disclosure of FERPA-protected information by the University shall remain subject to the notice obligations and protective action rights of 34 C.F.R. 99.31(a)(9)(ii).

5. Before the commencement of formal discovery in this matter, the parties shall meet and confer in good faith regarding further confidentiality terms governing information exchanged in this civil action.

BY THE COURT:

Padova, J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served today
via the Court's ECF filing system upon:

Patricia M. Hamill
Melissa A. Anderson
Conrad O'Brien P.C.
1500 Market Street, 39th Floor
Philadelphia, PA 19102
phamill@conradobrien.com
manderson@conradobrien.com
Attorneys for Plaintiff

Dated: January 23, 2017

/s/ Joshua W. B. Richards
James A. Keller
Joshua W. B. Richards
Amy L. Piccola
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102

Wendy S. White
Office of General Counsel
University of Pennsylvania

Counsel for Defendant